

ORIGINAL

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MAY - 3 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

*Via Hand Delivery*

May 3, 2002

**EX PARTE**

Marlene Dortch  
Secretary  
Federal Communications Commission  
The Portals  
TW-A325  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Oral *Ex Parte* Presentation  
CC Docket Nos. 95-20; 98-10; 00-185; 01-337; 02-33; MB Docket 02-70

Dear Ms. Dortch:

On May 2, 2002, the undersigned met with Commissioner Abernathy, Matthew Brill and Jennie Berrie to discuss EarthLink's positions in the above-referenced dockets.

In this meeting, EarthLink discussed several issues it raises in its Comments in the *Broadband Wireline NPRM* (CC 02-33). EarthLink discussed how access to underlying telecommunications services allowed a competitive ISP market to develop and how American consumers benefit from the ability to choose from among multiple ISPs in both narrowband and broadband environments on the basis of price, service quality, connection speed, content, advertising (or lack thereof) and other services, including security and privacy features. EarthLink provided Mr. Brill EarthLink company-related materials which highlight the services it offers including broadband services, a copy of which documents is attached hereto as Exh. A.

We discussed that internet access (both narrowband and broadband) is an information service which is delivered via telecommunications, and that such telecommunications offered to the public for a fee constitute a telecommunications service. EarthLink agrees with the Commission's desire to treat similar broadband services (e.g. delivered either via cable modem or via DSL) in a like manner, but disagrees with the Commission's recent conclusion in the *Cable Modem NOI* (CC 00-185) and similar Tentative Conclusions in the *Broadband Wireline NPRM* that cable modem transport and DSL loops respectively are themselves information services.

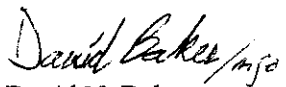
We further discussed how *Computer II* and *Computer III* rules have continued relevance in the broadband marketplace and that RBOCs should not be allowed to discriminate in the pricing and provisioning of wholesale DSL services in favor of their affiliated internet services at the expense of unaffiliated independent ISPs.

We also discussed the Commission's pending review of the AT&T – Comcast merger (MB 02-70). We discussed EarthLink's successful rollout of independent ISP service in 30 (so far) Time Warner Cable markets and EarthLink's recent agreement with AT&T Broadband to offer service in AT&T's Greater Boston and Seattle markets later this year. We emphasized the need for AT&T to honor long-standing commitments to open its cable systems this year beyond just these two markets. In support of this, we provided copies of the documents attached hereto as Exhibit B.

Separately, the undersigned also met with Commissioner Martin and Daniel Gonzalez; with Commissioner Copps and Jordan Goldstein; and with Kyle Dixon and Susan Eid of the Chairman's office. We discussed substantially the same issues as in our first meeting, and provided some or all of the attached materials.

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, ten copies of this Notice are being provided to you for inclusion in the public record in the above-captioned proceedings. Should you have any questions, please contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "David Baker" with a stylized flourish at the end.

David N. Baker  
VP, Law and Public Policy  
EarthLink, Inc.

CC: Chairman Powell  
Commissioner Abernathy  
Commissioner Martin  
Commissioner Copps  
Kyle Dixon  
Susan Eid  
Matthew Brill  
Jennie Berrie  
Dan Gonzolez  
Jordan Goldstein

# **Exhibit A**



**FOR IMMEDIATE RELEASE: March 12, 2002**

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Jennifer Bowcock  
Alexander Ogilvy for EarthLink  
404-881-2379  
jbowcock@alexanderogilvy.com

Jackie Zide  
Manning, Selvage & Lee for EarthLink  
323-866-6008  
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## **AT&T BROADBAND AND EARTHLINK FORGE ISP CHOICE AGREEMENT**

***— EarthLink to offer Consumers High-Speed Internet via  
AT&T Broadband network in Greater Boston and the Seattle Market—***

**ATLANTA and ENGLEWOOD, Colo.** — AT&T Broadband and EarthLink have reached an agreement that allows EarthLink to offer high-speed cable Internet service via AT&T Broadband's network, the companies said today. EarthLink will initially launch its EarthLink High Speed Internet service in greater Boston and in the Seattle market. The companies anticipate launching EarthLink's service in additional cities in 2003.

As part of the agreement, EarthLink will offer a full service package including high-speed Internet access, content, applications and functionality.

AT&T Broadband began testing ISP choice in Boulder, Colo., in June 2000. The \$20 million six-month trial, which included EarthLink, tested technical and operational issues enabling multiple ISPs on the broadband network.

"This agreement is the culmination of years of investing to develop a multiple-ISP solution to offer consumers a choice of Internet providers on our network," said C. Michael Armstrong, AT&T chairman. "We look forward to working with EarthLink to bring the power of high-speed cable Internet and choice to more consumers."

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#### 2-2-2 AT&T BROADBAND AND EARTHLINK FORGE ISP CHOICE AGREEMENT

“Reaching a second cable partnership – particularly with the largest cable provider in the industry – is a significant milestone in helping us to achieve our broadband expansion goals,” said Garry Betty, chief executive officer of EarthLink. “Along with AT&T Broadband, we are pleased to be able to offer these customers a choice of ISPs.”

AT&T Broadband is the nation’s largest cable provider in the U.S. with 13.6 million cable customers. About 1.5 million customers subscribe to AT&T Broadband Internet, the company’s high-speed cable Internet service. AT&T Broadband will continue to offer a full range of ISP services. AT&T Broadband will pursue discussions with other ISPs to offer consumers additional choice.

The agreement also gives EarthLink the largest cable Internet footprint of any independent ISP in the country. The company signed its first multiple-ISP agreement with Time Warner Cable in November 2000. Since then, EarthLink High Speed Internet service has been launched in 24 Time Warner Cable markets, and plans are in place to launch in the remaining 15 Time Warner markets by mid-2002.

Today, EarthLink is a leading broadband Internet service provider. EarthLink is the only ISP to offer high-speed Internet access nationally through three major broadband technologies: cable, DSL and two-way satellite. The company also offers its award-winning Internet services on a wholesale basis via cable, DSL and fixed wireless technologies. Its commitment to offer a variety of broadband technologies through multiple vendors allows EarthLink to offer its high-speed services to customers in more areas of the country.

**NOTE: AT&T Broadband and EarthLink will hold a press briefing regarding this announcement on a conference call today, March 12, 2002, at 11 a.m. ET. Media interested in participating may dial 800-553-0351. A rebroadcast of the teleconference will be available beginning at 2:30 p.m. ET today until March 13, 2002 at midnight. The rebroadcast number is 800-475-6701 access code 631301.**

3-3-3 AT&T BROADBAND AND EARTHLINK FORGE ISP CHOICE AGREEMENT  
**About AT&T Broadband**

AT&T Broadband, a business unit of AT&T, is the nation's largest broadband services company, providing television entertainment services to about 14 million customers across the nation. The company also provides advanced services, such as digital cable, high-speed cable Internet services and competitive local phone service. More information on AT&T Broadband services can be found at [www.attbroadband.com](http://www.attbroadband.com). AT&T (NYSE:T) is the world's leader in telecommunications services and technology.

**About EarthLink**

EarthLink brings the magic of the Internet to approximately 4.8 million subscribers every day. Headquartered in Atlanta, EarthLink provides a full range of innovative access, hosting and e-commerce solutions to thousands of communities over a nationwide network of dial-up points of presence, as well as high-speed access and wireless technologies. EarthLink is committed to doing an exceptional job of pleasing its subscribers, shareholders and the community by following the company's Core Values and Beliefs [<http://www.earthlink.net/about/ourvalues/cvb/index.html>]. Information about EarthLink services is available by calling 800-395-8425 and through EarthLink's Web site at [www.earthlink.net](http://www.earthlink.net).

# # #

*This press release contains "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. These include, but are not limited to, statements regarding the Company's plans, intentions and expectations. Such statements are inherently subject to a variety of risks and uncertainties that could cause actual results to differ materially from those projected. These risks include increased levels of competition, shortages of key equipment, restrictions on the Company's ability to finance its growth and other factors. A more extensive discussion of the risk factors that could impact these areas and the Company's overall business and financial performance can be found in the Company's reports filed with the Securities and Exchange Commission. Given these concerns, investors and analysts should not place undue reliance on forward-looking statements.*

## FACT SHEET

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**Company:** EarthLink brings the magic of the Internet to approximately 4.8 million subscribers every day. Headquartered in Atlanta, EarthLink provides a full range of innovative access, hosting and e-commerce solutions to thousands of communities over a nationwide network of dial-up points of presence, as well as high-speed access and wireless technologies.

Through its dedication to its core values, its actions, and products and services, EarthLink continually proves its commitment to making the Internet a relevant, entertaining and personal tool for its subscribers. Reflecting this commitment, EarthLink regularly wins industry awards for member satisfaction, reliability and outstanding service.

**Core Values & Beliefs** The 10 Core Values and Beliefs (CVBs) [<http://www.earthlink.net/about/ourvalues/cvb/index.html>] at the heart of everything EarthLink does -- from the most significant strategic decisions to daily interaction with its subscribers -- are the driving force behind EarthLink's corporate culture. Along with *Your Internet Bill of Rights* (<http://rights.earthlink.net/>) -- a charter of what EarthLink subscribers should expect from their ISP -- the CVBs are the definitive statement of EarthLink's commitment to continually providing the best service in the ISP industry.

**Standard Services** EarthLink's \$21.95-a-month unlimited dial-up service includes:

- EarthLink 5.0 software, an easy-to-use, intuitive, all-in-one interface that combines the power of the open Internet with the simplicity of an online service;
- 8 total email addresses, each with its own 10 MB personal Web site and Personal Start Page
- "Click-N-Build" Web site creation tool;
- Award-winning 24/7 toll-free support;
- Customizable portal to the Internet -- the Personal Start Page<sup>SM</sup>;
- Access to EarthLink's nationwide network of dial-up numbers in North America with local coverage in markets covering 99 percent of U.S. households, 99 percent of which are v.90 standard;
- *eLink*, EarthLink's weekly subscriber electronic newsletter.

**High-Speed Services** EarthLink's high-speed Internet service includes everything highlighted in EarthLink's "Standard Services" plus:

- An always-on connection with speeds up to 1.5 Mbps
- Convenient and easy self-install option in many areas;
- Free firewall software with all accounts;
- Home Networking and Static IP options available
- Service over DSL, cable and satellite;
- Access to EarthLink's network of dial-up numbers.

**Personal Start Page**

EarthLink's popular Personal Start Page<sup>SM</sup> is a content-rich and highly customizable portal, designed to make each EarthLink subscriber's Internet experience even more personalized and productive.

As part of a highly customizable "personal start environment," EarthLink's Start Page provides subscribers with a wide range of choices for receiving the news, information and services they want from the sources they want.

Personal Start Page features include:

- Web-based email;
- Updated headline news, sports news and customizable sports scores, current weather conditions and forecasts, and business and financial news from leading media sources;
- Easy access to EarthLink's e-commerce site, The EarthLink Mall;
- A "Finance" area to EarthLink's Finance Center -- a personal finance portal including stock quotes, a broad variety of personal finance and investment content, and individual portfolio creation tools;
- A "Chat" area, which allows people to communicate in real-time via EarthLink's version of Instant Messenger, locate chat rooms of interest, and browse Internet event listings;
- A "Sports" area that provides customizable sports scores, news and updates;
- An "Entertainment" area offering the latest news and information on movies, music and books;
- A "Health" area providing news and information about personal health issues for women, men and children;
- A "Biz Center" area to EarthLink's personal business center which keeps EarthLink's business subscribers up to speed with a variety of content and services such as industry-specific news for local businesses, news feeds according to specific industry relevance, and a suite of e-commerce solutions;
- A "Support" area to EarthLink's Personal Support Center -- a single, easy-to-navigate support portal that puts all of EarthLink's award-winning service and support resources at subscribers' fingertips;

EarthLink's Personal Start Page lets subscribers condense the expanse of the Internet into a tight package of content specific to their preferences. Each subscriber's preferences are stored and their updated content is displayed every time they log on to the Internet or click back to their home page.

**Customer Support:**

EarthLink devotes approximately 60 percent of its staff to providing award-winning toll-free support, 24-hours-a-day, seven-days-a-week.

**Headquarters:**

1375 Peachtree Street  
Atlanta, Georgia, 30309

**Employees:**

6,000+

**Management:**

Sky Dayton, Chairman  
Garry Betty, CEO  
Mike McQuary, President  
Lee Adrean, CFO, Executive Vice President, Accounting and Finance  
Les Seagraves, Chief Privacy Officer  
Bill Heys, Executive Vice President, Sales  
Brinton Young, Executive Vice President, Strategic Planning and Marketing  
Carter Calle, Executive Vice President, Member Support  
Greg Stromberg, Executive Vice President, Employee Services  
Jon Irwin, Executive Vice President, Member Experience  
Karen Gough, Executive Vice President, Marketing

Fact Sheet 3-3-3

Lance Weatherby, Executive Vice President, EarthLink Everywhere  
Linda Beck, Executive Vice President, Operations  
Mike Lunsford, Executive Vice President, Strategic Brand Marketing  
Sam DeSimone, Executive Vice President and General Counsel  
Veronica Murdock, Executive Vice President, Acquisition and Integration  
Mark Petrovic, Vice President, Research and Development  
Dan Greenfield, Vice President, Corporate Communications

**Company Contact:**

Debra A. Thomas, Corporate Communications, 626-351-7064;  
presslink@earthlink.net

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**FOR IMMEDIATE RELEASE**

**Contacts:**

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**Investors**

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**EARTHLINK REPORTS CONTINUED BROADBAND GROWTH  
IN FIRST QUARTER RESULTS**

*Company Passes the Half Million Mark for High Speed Subscribers*

ATLANTA, Apr. 22, 2002 – EarthLink, Inc. (NASDAQ: ELNK) today announced its first quarter financial results for the three-month period ending March 31, 2002.

EarthLink reported that revenues grew to \$333.4 million in the first quarter, a 13 percent increase over the first quarter of 2001. Earnings before interest, taxes, depreciation and amortization (EBITDA) were \$6.5 million for the quarter, a \$25.0 million improvement from the prior year first quarter. The net loss for the first quarter, excluding acquisition and merger related expenses, narrowed to a negative \$19.0 million, or \$(0.13) per share, compared to a negative \$35.1 million for the first quarter 2001. The company also reported that it ended the quarter with approximately 4.9 million paying subscribers.

“Once again, EarthLink has demonstrated its ability to generate strong broadband growth, as we crossed the half million mark for high-speed subscribers during the first quarter,” said Garry Betty, EarthLink’s chief executive officer. “In addition, we built on the success of our multiple ISP relationship with AOL Time Warner by announcing an agreement with AT&T Broadband to begin offering a competitive high-speed alternative to customers in Boston and Seattle later this year. Through its cable, DSL and satellite offerings, EarthLink has the largest national broadband footprint of any ISP in the country.”

-- more --

## **First Quarter Financial Results**

### Revenue

Narrowband revenues were \$262.7 million in the quarter, an increase of 9 percent from the prior year first quarter. EarthLink ended the quarter with 4.2 million narrowband subscribers, down from 4.3 million a year ago, reflecting the negative effect on customer growth of price increases implemented in the second half of 2001 and the continuing migration of subscribers to high-speed access. EarthLink acquired 89,000 subscribers in the first quarter from smaller ISPs, including 30,000 wireless subscribers from OmniSky.

High-speed access continued to be an important component in EarthLink's growth strategy, as revenues rose to \$54.0 million, a 67 percent increase over the prior year's first quarter. EarthLink ended the quarter with 532,000 broadband subscribers, an 85 percent increase compared to a year ago and a 13 percent increase from yearend.

Web hosting revenues in the first quarter were \$13.5 million, a 19 percent decrease from the same quarter last year. The number of Web hosting customers was 175,000, up 2,000 from the end of the first quarter of 2001. Advertising, content and commerce revenue was \$3.2 million in the quarter, down slightly from \$3.9 million in the prior year first quarter.

Monthly customer churn improved from 4.5 percent in the fourth quarter of 2001 to 4.1 percent in the current quarter. Some further improvement in churn is expected over the course of the year as the company continues to focus on enhancing the customer experience and as the customer mix shifts more toward broadband services, which have lower rates of churn than narrowband offerings.

### Earnings before Interest, Taxes, Depreciation, and Amortization (EBITDA)

EarthLink's quarterly EBITDA improved to a positive \$6.5 million from a loss of \$18.5 million in the prior year first quarter. The improvement in the quarter continues to reflect increased revenue and margins from the narrowband price increase, lower narrowband telecommunications expenses, and effective containment of operating costs, while providing for additional sales and marketing expenditures.

### Balance Sheet

As of March 31, 2001, EarthLink held cash and marketable securities of \$554.2 million. Total cash used in the quarter was \$39.8 million. Capital expenditures were \$10.0 million in the

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quarter while payments related to acquisitions were \$11.5 million. Accounts payable and accrued liabilities declined by \$26.4 million, reflecting principally the payment in the first quarter of employee bonuses for 2001.

#### **Other First Quarter Highlights**

In the first quarter, EarthLink began the next phase in the deployment of its multiple ISP agreement with AOL Time Warner, launching high-speed service in 6 additional markets. Through the March 31, 2002, EarthLink was offering its award-winning Internet service and its full package of high-speed Internet access, content, applications and functionality to approximately 16 million homes passed in 26 markets. In addition, EarthLink laid the foundation for future growth by announcing a multiple ISP agreement with AT&T Broadband to launch broadband service in Boston and Seattle later this year. EarthLink also expanded its home networking service to high-speed cable subscribers, allowing both EarthLink's cable and DSL customers to enjoy the benefits of sharing their high-speed Internet connection across all the computers and peripherals in their homes.

In the first quarter, EarthLink also completed the acquisitions of Cidco and Omnisky and launched EarthLink Wireless Email and Internet Service on select Palm OS and Pocket PC handheld devices. These efforts are an important part of the company's expanding EarthLink Everywhere initiative to capitalize on the growing mobility of Internet access through non-PC based appliances. EarthLink now provides wireless email and Internet access on more handheld devices than any other major consumer ISP.

Building on its existing OEM agreements with Apple and Hewlett Packard, EarthLink also announced deals with IBM and Compaq during the quarter to extend its sales channels for the company's dial-up and high-speed services.

EarthLink also launched StarTrek.net, the only Star Trek-themed Internet access service, from EarthLink and Paramount Digital Entertainment. In addition, EarthLink received the only five-star rating among Internet service providers from the editors of Ziff Davis Smart Business. The magazine selected the Atlanta-based ISP as its "top pick," citing EarthLink's easy installation, abundance of local-access dial-up numbers and array of broadband choices, including cable, DSL and satellite high-speed access.

Business Outlook

The following statements are based on management's current expectations. These statements are forward-looking, and actual results may differ materially. See comments under "Forward-Looking Statements" below. The company undertakes no obligations to update these statements.

EarthLink's principal operating objectives are to deliver steady growth in total subscribers while continuing to improve profitability. Based on first quarter results, current market trends, and the company's operating plans for the remainder of the year, EarthLink is refining its guidance for 2002.

EarthLink expects to end 2002 with approximately 5.2 million paying subscribers. We anticipate that the largest portion of the subscriber growth will come from EarthLink's high-speed offerings, where EarthLink will capitalize on its well-established DSL and satellite offerings and its expanding cable broadband services to grow its high-speed subscriber base by 250,000-300,000 subscribers for the year. The remaining growth will come from further improvement in narrowband churn over the course of the year and growth in EarthLink's MailStation Internet appliance offering, particularly in the seasonally strong year-end holiday period. Revenues for the year are expected to be approximately \$1.4 billion.

EarthLink expects to improve operating margins in 2002 compared to 2001 by continuing to reduce telecommunications costs per subscriber for both its narrowband and broadband services, consolidating to a single billing and customer information system, improving efficiencies in the customer support call centers, and growing all other operating expenses more slowly than revenue, which is expected to increase operating leverage. Higher operating margins are expected to fund an approximately 10 percent increase in sales and marketing expenses over the prior year while still significantly increasing EBITDA. The company expects EBITDA to be in the range of \$60-\$75 million for the year and net loss, before merger and acquisition related costs, to be in the range of (\$0.14) - (\$0.24) per share.

EarthLink anticipates ending the second quarter of 2002 with between 590,000 - 600,000 broadband subscribers and between 4.9-4.95 million total paying subscribers. Revenues are expected to be in the range of \$338-\$342 million. The company expects EBITDA to be in the range of \$9-\$14 million, and expects net loss, before merger and acquisition related costs, to be in the range of (\$0.08) - (\$0.11) per share.

## **Conference Call for Analysts and Investors**

Management will host a conference call on April 22, 2002 at 5 p.m. EDT. Investors in the United States and Canada interested in participating in the conference call may dial (877) 502-9273 and reference the EarthLink earnings call. International investors may dial (913) 981-5582 and reference the same. EarthLink recommends dialing in approximately 10 minutes prior to the scheduled start time. Investors will also have the opportunity to listen to a live Webcast of the conference call via the Internet at the following site:

[http://www.corporate-ir.net/ireye/ir\\_site.zhtml?ticker=ELNK&script=2100](http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=ELNK&script=2100)

A taped replay will be available beginning at 9 p.m. EDT on April 22 through 1 a.m. EDT on April 27, 2002 by dialing (888) 203-1112. International callers should dial (719) 457-0820 for the replay. The replay confirmation code is 761867. Additionally, the Webcast of this call will be archived on our site at:

[http://www.corporate-ir.net/ireye/ir\\_site.zhtml?ticker=ELNK&script=1100](http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=ELNK&script=1100)

## **About EarthLink**

EarthLink brings the magic of the Internet to approximately 4.9 million subscribers every day. Headquartered in Atlanta, EarthLink provides a full range of innovative access, hosting and e-commerce solutions to thousands of communities over a nationwide network of dial-up points of presence, as well as high-speed access and wireless technologies. EarthLink is committed to doing an exceptional job of pleasing its subscribers, shareholders and the community by following the company's Core Values and Beliefs [<http://www.earthlink.net/about/ourvalues/cvb/index.html>]. Information about EarthLink services is available by calling 800-395-8425 and through EarthLink's Web site at [www.earthlink.net](http://www.earthlink.net).

# # #

## **Cautionary Information Regarding Forward-Looking Statements**

Although we believe that our expectations that are expressed in these forward-looking statements are reasonable, we cannot promise that our expectations will turn out to be correct. Our actual results could be materially different from and worse than our expectations. With respect to such forward-looking statements, the Company seeks the protections afforded by the Private Securities Litigation Reform Act of 1995. These risks include, without limitation, (1) that we may not successfully enhance existing or develop new products and services in a cost-effective manner to meet customer demand in the rapidly evolving market for Internet services; (2) that our service offerings may fail to be competitive with existing and new competitors; (3) that competitive product, price or marketing pressures could cause us to lose existing

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customers to competitors, or may cause us to reduce, or prevent us from raising, prices for our services; (4) that our commercial and alliance arrangements, including marketing arrangements with Apple and Sprint, may be terminated or may not be as beneficial to us as management anticipates; (5) that declining levels of economic activity, increasing maturity of the market for internet access, or fluctuations in the use of the Internet could negatively impact our subscriber growth rates and incremental revenue levels; (6) that we may experience other difficulties that limit our growth potential or lower future overall revenues; (7) that service interruptions could harm our business; (8) that we are not profitable and may never achieve profitability or positive cash flow; (9) that our third party network providers may be unwilling or unable to provide Internet access; (10) that we may be unable to maintain or increase our customer levels if we do not have uninterrupted and reasonably priced access to local and long-distance telecommunications systems for delivering dial-up and/or broadband access, including, specifically, that integrated local exchange carriers and cable companies may not provide last mile broadband access to the Company on a wholesale basis at all or on terms or at prices that allow the Company to grow and be profitable in the broadband market; (11) that we may not be able to protect our proprietary technologies or successfully defend infringement claims and may be required to enter licensing arrangements on unfavorable terms; (12) that our new initiatives such as "EarthLink Everywhere" may not be as successful as management anticipates; (13) that government regulations could force us to change our business practices; (14) that our stock price may fluctuate significantly regardless of EarthLink's actual operating performance; and (15) that some other unforeseen difficulties may occur. This list is intended to identify some of the principal factors that could cause actual results to differ materially from those described in the forward-looking statements included herein. These factors are not intended to represent a complete list of all risks and uncertainties inherent in the Company's business, and should be read in conjunction with the more detailed cautionary statements included in EarthLink's other filings with the Securities and Exchange Commission.

The company believes that EBITDA and net loss, excluding acquisition and merger related costs, are additional meaningful measures of operating performance. However, this pro forma information will necessarily be different from comparable information provided by other companies and should not be used as an alternative to our operating and other financial information as determined under accounting principles generally accepted in the United States of America.

**FOR IMMEDIATE RELEASE**

Contact:

Carla Shaw  
EarthLink  
404-748-7436  
shawcm@corp.earthlink.net

## **EARTHLINK WINS CNET AWARD FOR THIRD YEAR IN A ROW**

*Review praises easy-to-use tools, reliability and support*

ATLANTA, April 26, 2002 – Citing EarthLink's (Nasdaq: ELNK) "cool tools and reliability," CNET for the third consecutive year has awarded top honors to EarthLink in its annual review of Internet service providers (ISP).

In an article titled *Dialing for dollars: we compare five major dial-up ISPs*, CNET writes, "... EarthLink gets our nod as the best among the major dial-up ISPs. Why? The service helps you get started, then steps nimbly out of the way. It offers easy-to-use tools and doesn't pester you with ads or spam. And, to top it off, EarthLink provides highly reliable service and surprisingly good support for a reasonable \$22 a month."

CNET also acknowledges EarthLink's simple setup and strong privacy policy in naming the ISP best of breed for dial-up access.

"Internet service is highly competitive, and we are pleased and honored that CNET has named EarthLink its ISP of choice for three years in a row, said Mike McQuary, president of EarthLink. "We remain committed to providing subscribers with a better, faster, more reliable Internet connection and to giving each customer a wide-range of services, including broadband and wireless offerings, helpful navigation tools and personalized home pages."

In its review posted April 17, 2002, CNET rates EarthLink highly for its reliable access, which CNET calls "top notch," and its service, which the article likens to having "your personal Internet valet." The review also praises the company's Acceptable Use Policy and strong privacy protection, which made EarthLink "the only ISP to publicly turn down the FBI's request to install its Carnivore e-mail monitoring system."

To read more about CNET's selection, go to <http://www.cnet.com/internet/0-3762-8-9635218-2.html?tag=st.is.3762-8-9635218-1.arrow.3762-8-9635218-2>.

## 2-2-2 EarthLink Wins CNET Award for Third Consecutive Year

### About EarthLink

EarthLink (NASDAQ: ELNK) brings the magic of the Internet to approximately 4.9 million subscribers every day. Headquartered in Atlanta, EarthLink provides a full range of innovative access, hosting and e-commerce solutions to thousands of communities over a nationwide network of dial-up points of presence, as well as high-speed access and wireless technologies. EarthLink is committed to doing an exceptional job of pleasing its subscribers, shareholders and the community by following the company's Core Values and Beliefs

[<http://www.earthlink.net/about/ourvalues/cvb/index.html>]. Information about EarthLink services is available by calling 800-395-8425 and through EarthLink's Web site at [www.earthlink.net](http://www.earthlink.net).

# # #

# **Exhibit B**



King County  
Information and Telecommunications  
Services Division  
Department of Information and  
Administrative Services  
700 Fifth Avenue Suite 2300  
Seattle, WA 98104-5002  
(206) 896-0600  
(206) 296-0843 FAX  
1-800-863-6388 TDD

February 19, 2002

Janet Turpen  
Regional Director of Franchising - WA  
AT&T Broadband  
22025 30<sup>th</sup> Drive SE  
Bothell, WA 98021-4444

Dear Ms Turpen:

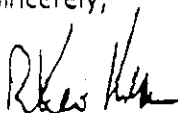
I am writing to you to discuss several issues of Importance to King County in our ongoing franchise relationship with AT&T Broadband. One of those is the termination of the Excite@Home service and the effect that has on open-access provisions. The other is the deliverables discussed in AT&T's May 19, 2000 letter to King County.

Section 3G of Ordinance 13855 outlines an approach towards the open-access issue that had AT&T Broadband open their Internet cable modem platform upon the end of the exclusive contractual relationship with Excite@Home on June 4, 2002. It is our belief that Excite@Home's bankruptcy, the cessation of AT&T's business relationship with Excite@Home, and your moving of cable modem subscribers to your own ATT8i service has ended your exclusive relationship with Excite@Home. Thus, pursuant to Section 3G, open-access should immediately be put in place.

The second item we'd like to discuss is the set of deliverables discussed in your May 2000 letter. Specifically, we are interested in working with you on the AT&T Cares Days at two schools in unIncorporated King County and in conducting the customer satisfaction survey. One of the AT&T Cares Days was to have been conducted in 2001 and the other in 2002. It is our understanding that circumstances prevented the 2001 event from being held. We are interested in working on coordinating both events in 2002. We are also quite interested in getting the customer survey conducted as early in 2002 as possible.

We very much would like to work out resolutions to these issues as quickly as possible, so please contact me at your earliest convenience so we can schedule a meeting to discuss these issues further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin Kearns', with a stylized flourish at the end.

Kevin Kearns  
Manager

December 6, 1999

Chairman William E. Kennard  
Federal Communications Commission  
445 Twelfth Street, SW, Room 8-B201  
Washington, DC 20554

Dear Chairman Kennard:

At your suggestion, the undersigned met to discuss an acceptable means of providing consumers with a choice of Internet Service Providers ("ISPs") when connecting to the Internet at high speed over cable. After a series of extensive discussions, this effort has produced the principles set forth below. While there remains disagreement concerning current exclusive contractual arrangements between AT&T and other companies, AT&T has agreed to adhere to the following principles once these exclusive contractual arrangements no longer apply.

AT&T will work toward, and implement, high-speed Internet access over cable that will provide consumers with:

- a choice of ISPs;
- the ability to exercise their choice of ISPs without having to subscribe to any other ISP;
- a choice of Internet connections at different speeds, and at prices reasonable and appropriate to those speeds;
- direct access to all content available on the World Wide Web without any AT&T-imposed charge to the consumer for such content;
- the continued ability to change or customize their "start page" and other aspects of their Internet experience;
- the functionality of their ISP comparable to that which such ISP has on competing high-speed systems, subject to any technical constraints particular to, or imposed upon, all ISPs using AT&T's cable system to deliver high-speed Internet access.

To that end, AT&T is prepared to negotiate private commercial arrangements with multiple ISPs, to take effect upon the expiration of existing exclusive contractual arrangements, that would provide the ISP:

- Internet transport services for high-speed Internet access at prices reasonably comparable to those offered by AT&T to any other ISP for similar services, subject to other terms negotiated between the parties on a commercial basis;
- the opportunity to market directly to consumers high-speed Internet access over cable using AT&T's Internet transport services;

- the opportunity through means to be mutually agreed upon, to market their high-speed Internet access which uses AT&T's Internet transport services to AT&T's cable customers who have not already designated an ISP;
- the opportunity to bill cable subscribers directly for services provided by the ISP that are additional to the services provided by AT&T;
- the opportunity to differentiate service offerings by various means, such as enhanced customer care and advanced applications; and
- the opportunity to maintain brand recognition in all such offerings.

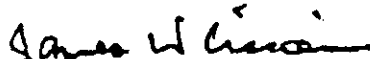
Any such opportunities will be subject to terms and conditions to be agreed upon by the parties which will address, as appropriate, but not be limited to issues such as pricing, billing, customer relationship, design of start page, degree of customization, speed, system usage, caching services, co-branding, ancillary services, advertising and e-commerce revenues, and infrastructure costs.

Please do not hesitate to call any of us if you have any questions.

Sincerely,



David N. Baker  
Vice President, Legal & Regulatory Affairs  
Mindspring Enterprises, Inc



James W. Cicconi  
General Counsel & Executive Vice President  
AT&T Corp.



Kenneth S. Fellman, Esq.  
Chairman, FCC Local & State Government  
Advisory Committee

cc: Commissioner Ness  
Commissioner Furchtgott-Roth  
Commissioner Powell  
Commissioner Tristani

**MEMORANDUM OF AGREEMENT  
BETWEEN AT&T CORP. AND  
THE MASSACHUSETTS COALITION FOR  
CONSUMER CHOICE AND COMPETITION ON THE INTERNET  
WITH RESPECT TO AT&T'S POLICY TO  
PROVIDE CUSTOMERS WITH A CHOICE OF ISPs WITHIN ITS  
MASSACHUSETTS CABLE SYSTEMS**

WHEREAS, The Massachusetts Coalition for Consumer Choice and Competition on the Internet has collected over 100,000 citizen signatures and garnered the support of many prominent Massachusetts citizens and organizations for passage of Initiative Petition "H", entitled "A Law To Promote Competition In The Cable-Based Internet Access Market;" and whereas, the Coalition is in the process of placing on the ballot this November said initiative petition which, if enacted, would require all cable systems in Massachusetts to provide non-discriminatory open access to unaffiliated ISPs; and

WHEREAS, AT&T Corp. has stated its policy that customers should have a choice of ISPs and both AT&T Corp. and The Massachusetts Coalition for Consumer Choice and Competition on the Internet have stated their intent and desire to resolve issues relating to customer choice by agreement between themselves rather than through a ballot initiative; and

WHEREAS, AT&T Corp. and The Massachusetts Coalition for Consumer Choice and Competition on the Internet have met to attempt to resolve this issue in Massachusetts by voluntary agreement and have succeeded in agreeing upon a basic structure therefore which is acceptable to both parties; and

WHEREAS, AT&T Corp. and The Massachusetts Coalition for Consumer Choice and Competition on the Internet are committed to the improvement and enhancement of the competitiveness, innovation, and accessibility of "new economy" technologies in the Commonwealth.

NOW, THEREFORE, AT&T Corp. and its affiliates and subsidiaries (collectively "AT&T") and The Massachusetts Coalition for Consumer Choice and Competition on the Internet ("Coalition") hereby enter into this agreement, which sets out the commitments that AT&T and the Coalition are undertaking.

- I. **MASSACHUSETTS POLICY REGARDING CUSTOMER CHOICE.** AT&T agrees to adopt and implement a policy in Massachusetts of offering its cable modem customers a choice among multiple ISPs who have negotiated commercial arrangements with AT&T, including ISPs that are unaffiliated with AT&T. Consistent with technological and facilities limitations and with AT&T providing a high-quality broadband consumer experience, AT&T agrees to use reasonable commercial efforts to provide cable-based broadband Internet

customers with a broad choice among unaffiliated ISPs.

- II. **ISP AGREEMENTS.** AT&T shall enter into negotiations for private commercial arrangements with unaffiliated ISPs that wish to offer high speed Internet access and related services to consumers over AT&T's broadband cable systems. It is understood that the commercial terms negotiated between AT&T and ISPs may vary depending on a number of economic factors (including but not limited to costs incurred by AT&T, marketing and technical commitments made by the respective parties, and the types of services offered). However, AT&T intends that such commercial arrangements would provide the ISP Internet transport services for high-speed Internet access at prices reasonably comparable to those offered by AT&T to any other ISP, including its affiliates, for similar services, subject to other terms negotiated between the parties on a commercial basis. AT&T shall not require ISPs to grant equity in their companies as a condition of entering into service agreements. AT&T also agrees that it will allow ISPs, at their option, to have a direct relationship with cable modem customers which would include, but not be limited to, the ISP marketing and selling high speed Internet access and related services over cable directly to customers and directly billing and collecting from these customers for services provided by the ISP. Nothing in this Section will preclude AT&T from maintaining or establishing a commercial relationship with such high speed Internet access customers including, but not limited to, the offering of billing options, service bundling options and the use of the AT&T brand name.
- III. **AT&T OPERATING POLICIES.** AT&T shall operate its broadband cable systems in a manner which does not discriminate among ISP traffic based on whether an ISP is affiliated with AT&T. To the extent commercially and technically practicable, AT&T shall allow consumers to switch ISPs subject to reasonable order processing charges. As a matter of principle and of customer satisfaction, AT&T is committed to facilitate maximum access by its customers to any content of their choosing. Therefore, AT&T is committed to developing and negotiating appropriate technical and commercial mechanisms for managing bandwidth usage associated with video streaming on a shared network, and for ensuring the availability of streaming video to customers who desire it. AT&T will permit ISPs to obtain Internet backbone capacity from its own service, or to supply their own Internet backbone capacity. AT&T is committed to negotiating appropriate technical and commercial terms for such arrangements.
- IV. **TIMING AND IMPLEMENTATION.** AT&T agrees to conduct a pilot program to offer customers a choice of ISPs over its cable systems in at least one and up to three Massachusetts cities and/or towns, commencing operations no later than October 31, 2001. AT&T agrees to commence implementation of the customer choice policies stated herein within all of its broadband operations in Massachusetts no later than July 1, 2002.
- V. **NATIONAL BROADBAND CUSTOMER CHOICE POLICY.** AT&T declares that its national broadband customer choice policy is comparable and consistent with

the provisions contained herein. AT&T also agrees to actively encourage other U.S. cable operators to voluntarily adopt comparable policies for Massachusetts and for the nation.

VII. **BALLOT INITIATIVE.** In consideration of AT&T's commitments contained herein and since this agreement will render the Coalition's ballot initiative unnecessary, the Coalition and the First Ten Signers of Initiative Petition "H", represented by Christopher Grace, hereby agree not to complete the qualification process for Initiative Petition "H" for the November 2000 ballot.


VIII. **DISPUTES ARISING FROM THIS AGREEMENT.** Any and all disputes between the parties arising from this agreement shall be resolved through good-faith negotiation and/or mediation rather than through litigation. Additionally the agreement is not intended to create any third-party rights or causes of action.

**AGREED BY:**

**AT&T Corp.**

  
James W. Cicconi, General Counsel and Executive Vice President

**The Massachusetts Coalition for Consumer Choice and Competition on the Internet**

  
J. Christopher Grace, Chairman,  
and as the designated representative of the First Ten Signers of Initiative Petition "H"